EX PARTE OR LATE FILED

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range	)	ET Docket No. 98-206
	)	RM-9147
and	)	RM-9245
	)	DA 00-1841
Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates	)	

To: The Commission

COMMENTS OF SKYBRIDGE L.L.C. ON
"EX PARTE SUBMISSION OF
NORTHPOINT TECHNOLOGY, LTD.
AND BROADWAVEUSA"

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SUMMARY

On August 29, 2000, Northpoint Technology, Ltd., and BroadwaveUSA (collectively, "Northpoint") filed a pleading (the "Northpoint Pleading") which asks for an immediate grant of exclusive nationwide access to the 12.2-12.7 GHz band for the provision of terrestrial point-to-multipoint ("PTM") video entertainment services. To support its extraordinary request, Northpoint posits a number of factual claims and legal theories that are utterly devoid of merit.

In the following pages, SkyBridge demonstrates that, contrary to Northpoint's assertions: (1) there is no legal, factual or policy predicate to support Northpoint's claim that its PTM applications (and the associated allocation and regulatory scheme) must be tied, procedurally and chronologically, to the pending applications (and associated allocation and regulations) for nongeostationary ("NGSO") fixed satellite service ("FSS") system licenses; (2) Northpoint has failed to demonstrate that its PTM system will not cause harmful interference to NGSO FSS systems; (3) neither the ORBIT Act nor the Commission's November 1998 Public Notice establishing a cut-off date for Ku-band NGSO FSS applications in any way prevents the Commission from seeking additional PTM applications and, if need be, awarding them by auction; and (4) there is no basis for Northpoint's claim that the SHVIA compels the Commission to immediately award licenses to Northpoint.

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SkyBridge L.L.C. ("SkyBridge"), by and through its attorneys, hereby comments on the "Ex Parte Submission Of Northpoint Technology, Ltd. and BroadwaveUSA," filed in the above-captioned proceedings on August 29, 2000 (the "Northpoint Pleading").[1/]

I. INTRODUCTION

The Northpoint Pleading is the latest in a continuing series of strained attempts by Northpoint to obtain access to 500 MHZ of nationwide spectrum in the 12.2-12.7 GHz band, without ever having to demonstrate, inter alia, that its proposed terrestrial point-to-multipoint ("PTM") system can operate in a manner that will not cause harmful interference

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1/ Herein, SkyBridge will refer to Northpoint Technology, Ltd., and BroadwaveUSA collectively as "Northpoint."

to nongeostationary ("NGSO") fixed service satellite ("FSS") systems. It is an extraordinary request for unprecedented relief.

The bottom line of Northpoint's arguments is that its applications should be granted immediately and not be subjected to competing applications and the possibility of an auction. As SkyBridge has noted in the past, whether Northpoint must face competing applications for its proposed PTM system is of no particular moment to SkyBridge.[2/] However, in order to make the argument that it is entitled to the immediate grant of its license applications, Northpoint: (1) misstates several critical facts involving its claimed ability to co-exist with NGSO FSS systems in general and with SkyBridge in particular;[3/] and (2) posits a wholly unsupported legal theory to the effect that the Commission cannot act on the NGSO regulations at issue in ET Docket No. 98-206 and the related applications unless and until a regulatory scheme to accommodate PTM systems is adopted and Northpoint's applications are granted. In order to support its request, Northpoint is forced to distort practically every material fact and relevant legal precedent. Below, SkyBridge will address in detail the fundamental flaws in Northpoint's arguments.

II. DISCUSSION

Northpoint has erected several pillars to sustain its claim that it is entitled to the immediate grant of licenses that, in the aggregate, would give it 500 MHZ of spectrum in the 12.2-12.7 GHz band on a nationwide basis. These include, inter alia, the following: (1) that the Public Notice establishing a cut-off date for the filing of applications for Ku-band

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2/ See, e.g., Letter to Magalie Roman Salas, Secretary, from Jeffrey H. Olson, attorney for SkyBridge, dated June 9, 2000, at 2.

3/ SkyBridge has already called one such distortion to the Commission's attention, specifically, Northpoint's erroneous claim that it had reached a spectrum sharing arrangement with SkyBridge. See Letter to Magalie Roman Salas, Secretary, from Jeffrey H. Olson, attorney for SkyBridge, dated September 8, 2000 ("SkyBridge September 8 Letter").

NGSO FSS systems also, by implication, established a like cut-off date for wholly terrestrial PTM systems such as Northpoint's;[4] (2) that the Northpoint application and the various NGSO FSS applications are so inextricably intertwined that neither those applications nor the NGSO regulatory framework under consideration in ET Docket No. 98-206 can rationally be considered except in a single, unified manner; (3) that Northpoint has demonstrated that it will not cause harmful interference to either DBS or NGSO FSS systems; (4) that the "ORBIT" Act prohibits the Commission from calling for competing PTM applications to Northpoint's and then awarding licenses by auction; and (5) that the Commission is compelled by the "SHVIA"[5] to grant Northpoint's PTM applications by the end of November 2000.

As is demonstrated below, none of Northpoint's claims has any merit.

A. The NGSO Cut-Off Notice Did Not Establish A Cut-off Date for Terrestrial PTM Systems Such As Northpoint's.

The NGSO Cut-Off Notice was issued by the International Bureau ("IB") in November 1998, in response to SkyBridge's February 1997 application for a license to operate a NGSO FSS system in the Ku-band. The NGSO Cut-Off Notice very explicitly and unambiguously calls only for applications for NGSO FSS satellite systems (and related letters of intent) in the subject frequency bands; there is no mention whatsoever of terrestrial applications. This, of course, is not surprising, as Section 0.261 of the Commission's Rules[6] cannot, by any stretch of the imagination, be construed as delegating to the IB authority to

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[4] See International Bureau Satellite Policy Branch: Cut-off Established, Public Notice, Report No. SPB-141, released November 2, 1998 ("NGSO Cut-Off Notice") (establishing a cut-off date of January 8, 1999).

[5] Satellite Home Viewer Improvement Act, P.L. 106-113, 113 Stat. 1501, Appendix I, § 2002.

[6] 47 C.F.R. § 0.261.

issue a public notice regarding purely terrestrial applications that fall under the regulatory jurisdiction of the Wireless Telecommunications Bureau ("WTB").

Nonetheless, according to Northpoint, the IB implicitly established a cut-off date for terrestrial applications in the NGSO Cut-Off Notice because the issues raised in SkyBridge's and Northpoint's respective petitions for rulemaking,[7/] both of which are addressed to a greater or lesser degree in the Notice of Proposed Rulemaking ("NPRM") in ET Docket No. 98-206,[8/] are so intertwined that applications for NGSO systems such as SkyBridge's could not possibly be considered without also considering applications for PTM terrestrial systems such as Northpoint's. In brief, Northpoint's theory is groundless.

As Northpoint itself repeatedly emphasizes, the Commission was well aware of Northpoint's existence and desire to use the 12.2-12.7 GHz band in November 1998 when the NGSO Cut-Off Notice was released contemporaneously with the NPRM in ET Docket No. 98-206.[9/] Had the Commission had any interest at all in seeking applications for terrestrial systems that would be considered simultaneously with NGSO applications, it could have said so. For example, the Commission could have directed the IB and the WTB to issue a joint public notice (or separate contemporaneous ones) unambiguously requesting both satellite and terrestrial applications. It did not do so.

Thus, the several pages of the Northpoint Pleading that claim that the NGSO Cut-Off Notice gave "reasonable" or "fair" notice of the Commission's intent[10/] are completely inapposite; those precedents are relevant only if there is ambiguity as to the

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7/ SkyBridge's Petition for Rulemaking (the "SkyBridge Petition") was filed July 3, 1997 (RM-9147). Northpoint's Petition for Rulemaking (the "Northpoint Petition) was filed March 6, 1998 (RM-9245).

8/ 14 FCC Rcd 1131 (1998).

9/ See, e.g., Northpoint Pleading at 4-8.

10/ See, e.g., Northpoint Pleading at 7-9.

Commission's intent. Here, there is none. The NGSO Cut-Off Notice on its face is plainly limited to NGSO FSS satellite systems, and it was issued by a bureau with no relevant jurisdiction over terrestrial systems. Northpoint's novel theory requires the conclusion that the IB violated Section 0.261, or that the Commission was incapable of clearly expressing its intent on a matter about which it was well aware. Neither conclusion can withstand even minimal scrutiny.

B. The NGSO and PTM Regulatory Structures and Applications Are Not Inextricably Intertwined.

There is no support for Northpoint's theory that the issues involved in creating regulatory structures for NGSO and PTM systems, and then licensing those systems, are so intertwined as to require their unified consideration. Northpoint spends considerable effort trying to prove that, because both the SkyBridge Petition and the Northpoint Petition are addressed in the NPRM, the Commission must have viewed NGSO and PTM systems as inextricably intertwined, both with respect to the issues under consideration in ET Docket No. 98-206 and with regard to the various pending NGSO and PTM applications.[11/] Northpoint's theory is refuted by the face of the NPRM and by common sense.

The NPRM (excluding appendices and separate statements) is 51 pages in length. Of those 51 pages, four are devoted to the Northpoint Petition.[12/] The vast majority of the NPRM discusses in great detail the multiple and complex elements of a regulatory scheme that would facilitate co-frequency operation of, inter alia, geostationary ("GSO") satellites (both FSS and Direct Broadcast Satellite ("DBS")), NGSO FSS systems and various point-to-point fixed service ("FS") systems. The NPRM proposes specific regulatory solutions regarding these matters and asks for comment thereon.

11/ See, e.g., id. at 4-6.

12/ See 14 FCC Rcd at 1177-1181.

By comparison, the NPRM's discussion of the Northpoint Petition can only be described as abbreviated and noncommital. Of the eight paragraphs involved, five dwell on matters related to potential interference to DBS systems from Northpoint.[13/] Only two paragraphs are addressed to potential Northpoint interference to NGSO systems.[14/] Most significantly, the Commission does not propose to take any action whatsoever vis-à-vis the Northpoint Petition, save to ask for further information regarding the concerns expressed in the NPRM. "[W]e find it premature to make any proposals based on Northpoint's petition at this time."[15/]

The NPRM was adopted on November 19, 1998, and released on November 24, 1998. The NGSO Cut-Off Notice was released November 2, 1998. Had the Commission truly viewed NGSO and PTM licensing to be as intertwined as Northpoint claims, surely both the NGSO Cut-Off Notice and the contemporaneous NPRM would appear far different than they are. Additionally, had the Commission been thinking at all along the lines suggested by Northpoint, it would have put the Northpoint applications on public notice as accepted for filing. This is a fundamental precursor to the consideration of any such applications, see 47 U.S.C. § 309(b), but it is a step which the Commission has yet to take with regard to Northpoint's applications.

In its effort to overcome these inconvenient yet unambiguous facts, Northpoint suggests that not only would its interests be harmed if the Commission were to seek competing PTM applications or delay action on a PTM regulatory scheme, so too would the

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13/ Id. at 1178-80.

14/ Id. at 1180.

15/ Id. at 1180-81.

interests of the NGSO applicants be injured.[16] SkyBridge cannot speak for other NGSO systems, but it can restate unequivocally that it has no view as to whether other PTM applicants should be entertained, assuming arguendo that any PTM applications should be considered for licensing in the 12.2-12.7 GHz band.

As SkyBridge has repeatedly demonstrated, PTM systems have no business being in the 12.2-12.7 GHz band in the absence of a compelling demonstration of noninterference to NGSO systems.[17] However, as SkyBridge also repeatedly has demonstrated, if PTM systems are permitted in the band, SkyBridge will do what it reasonably can to accommodate those systems.[18] Attempting to identify a reasonable technical solution that would accommodate Northpoint has proven far more difficult than it was to reach an agreement with the GSO FSS, DBS and FS communities.[19] It is possible that other PTM applicants may prove to be far less intractable than Northpoint. In any event, Northpoint's claim that all others should be excluded because only it, among all possible PTM systems, has a proven ability to co-exist with NGSO systems has no basis in fact.[20]

16/ See Northpoint Pleading at 15.

17/ See, e.g., Letter to Magalie Roman Salas, Secretary, from Phillip L. Spector, attorney for SkyBridge, dated February 18, 2000 ("SkyBridge February 18 Letter").

18/ See, e.g., Letter to Magalie Roman Salas, Secretary, from Jeffrey H. Olson, attorney for SkyBridge, dated July 10, 2000 ("SkyBridge July 10 Letter").

19/ See Letter to Magalie Roman Salas, Secretary, from Jeffrey H. Olson, attorney for SkyBridge, dated July 13 ("SkyBridge July 13 Letter"); SkyBridge September 8 Letter.

20/ Equally groundless are several other factual claims made by Northpoint. For example, Northpoint claims that its system will bridge the digital divide. See Northpoint Pleading at 20-21. However, as SkyBridge has demonstrated, Northpoint's technology is particularly ill-suited -- from both a technical and economic perspective -- for providing terrestrial service in rural areas. See, e.g., SkyBridge February 18 Letter, at 3-4, Annex at 6-8. The hollow nature of Northpoint's claims in this regard is further illustrated by the fact that, so far as SkyBridge can discern, Northpoint has yet to participate in even one of the many recent Commission proceedings examining the specific question of the ability of new communications systems to serve, inter alia, rural areas. SkyBridge, on the other

(continued...)

C. Northpoint Has Not Demonstrated That It Can Co-Exist With Even A Single Satellite System.

Northpoint repeatedly makes the claim that its PTM system is the only one with a demonstrated capability to co-exist with satellite systems.[21/] This claim is not only factually incorrect, it begs the ultimate question.

The Commission will never know whether other PTM systems are better or less well-suited to share spectrum with DBS and NGSO systems if it bars additional applications. Northpoint makes much of its "patented" technology, but a patent is not a talisman that renders all other potential technologies inherently defective. Additionally, in

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20/ (...continued)
hand, has been an active participant in those proceedings. See, e.g., Letter to Magalie Roman Salas, Secretary, from Jeffrey H. Olson, attorney for SkyBridge, dated February 22, 2000 (transmitting for inclusion in ET Docket No. 98-206 SkyBridge's comments in the various rural service/digital divide proceedings).

More egregious, though, is Northpoint's claim that it seeks access to "only" 500 MHz, while the NGSO applicants, according to Northpoint, seek access, in the aggregate, to 24,360 MHz, with which they will provide service "to only a handful of wealthy subscribers." See Northpoint Pleading at 3. Northpoint's characterization of the NGSO applications is grossly misleading.

First, the NGSO applicants do not seek over 24,000 MHz of spectrum. They all have applied for access to essentially the same portion of the Ku-band (each seeking, on average, access to a total of 4 GHz) for the delivery of high-speed interactive broadband services to every corner of the U.S. and the world; SkyBridge has thoroughly documented the necessity for the amount of spectrum requested in its application. See, e.g., Annex to SkyBridge February 18 Letter, at 36-37. All of these NGSO systems will share the same spectrum amongst themselves, as well as with multiple existing and future GSO and FS systems. Northpoint, on the other hand, wants 500 MHz for the provision of terrestrial video entertainment services, and the whole purpose of the Northpoint Pleading is to prove that it should not be required to share that 500 MHz with any other terrestrial service.

Second, SkyBridge has demonstrated that its services will be specifically tailored and priced to be affordable for any American who currently can afford, e.g., cable television service. See, e.g., id. at 3-4; Attachments to Letter to Magalie Roman Salas, Secretary, from Jeffrey H. Olson, attorney for SkyBridge, dated February 22, 2000. Northpoint's suggestions to the contrary are entirely gratuitous and exceed the bounds of legitimate advocacy.

21/ See, e.g., Northpoint Pleading at 11-14.

SkyBridge's experience, of equal importance to a system's particular technical features in the sharing calculus is the applicant's willingness to take reasonable steps to accommodate other systems.

Moreover, Northpoint's claim that it has "demonstrated that its technology is not mutually exclusive with the NGSO applicants" is absurd.[22] As SkyBridge already has demonstrated, contrary to Northpoint's assertion, there is no agreement among SkyBridge and Northpoint on sharing the 12.2-12.7 GHz band.[23] Nor has any other NGSO applicant said that it could share with Northpoint. The "arrangement" among Virtual Geosatellite, LLC ("Virgo") and Northpoint cited in the Northpoint Pleading is not a sharing plan; Virgo effectively abandons the 12.2-12.7 GHz band in any location in which Northpoint is operating.[24] Certainly that is one way of eliminating interference, but it does not represent co-frequency operation.[25]

D. The ORBIT Act's Prohibition Against Auctioning Licenses for International Satellite Services Does Not Extend to Northpoint's PTM Service.

Northpoint makes the incredible claim that the ORBIT Act prevents the Commission from even contemplating seeking competing applications for PTM systems in the 12.2-12.7 GHz band and awarding licenses by auction. According to Northpoint, because

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22/ See id. at 11.

23/ See supra at 2 n.3; SkyBridge September 8 Letter.

24/ See Letter to Hon. William E. Kennard, Chairman, from David Castiel, President, Virtual Geosatellite, LLC, and Sophia Collier, President, Northpoint Technology, Ltd., dated March 9, 2000.

25/ Northpoint's claim that it "has negotiated for what can be considered an 'interference budget,' i.e., the small amount of additional noise that Northpoint could generate without causing unacceptable interference to incumbent DBS operators," is rather disingenuous. Northpoint Pleading at 11 (emphasis added). Northpoint confuses the concept of a negotiated, mutually acceptable agreement with a unilateral "solution" that one party attempts to impose on the other.

the prophylactic language of the ORBIT Act is not limited to auctions for "licenses" for "international satellite systems," but instead prohibits auctions for "any spectrum used for global communications satellite services,"[26/]

> [t]he auction prohibition is not limited to authorizations to operate a satellite service. The auction prohibition also extends to all other services, applicants and licensees that use spectrum designated for global satellite uses, such as terrestrial microwave.[27/]

There is, of course, nothing in the legislative history of the ORBIT Act to support Northpoint's contention. Nor, in reality, is the language in question at all ambiguous; the ORBIT Act's focus on "satellite spectrum" rather than "satellite licenses" is easily explained.

As Congress well knew when adopting the ORBIT Act, not all global satellite systems hold or seek U.S. licenses for the space segment. The Commission's regulatory structure accommodates this fact by permitting the timely filing of "letters of intent" by holders of space segment licenses from other countries, which are considered on an equal footing with applicants for U.S. licenses in the "processing round" in question.[28/] Those filing such letters of intent do not seek a space segment license (they already have one from another country) but, in essence, authority for their satellite systems to use the frequency band in question to provide service in the U.S. Similarly, earth station licenses -- separate and distinct from satellite licenses -- must be obtained in order for communications satellite systems to provide service.

Put simply, it would make no sense to bar the auction of space segment licenses, but allow the auction of either earth station licenses or the right to access to the U.S.

[26/] P.L. 106-180, § 647 (Mar. 17, 2000). See Northpoint Pleading at 16-17.

[27/] Northpoint Pleading at 16.

[28/] The NGSO Cut-Off Notice illustrates this fact.

market for foreign-licensed global satellite systems. Thus, Congress used the broader language that appears in Section 647, speaking of "spectrum used for global satellite communications services," to ensure that the auction prohibition functioned in a rational, nondiscriminatory way. There is not a scintilla of support for Northpoint's sweeping interpretation of that provision. Section 647 of the ORBIT Act represents a rational special exception to the more general goal of Section 309(j) of the Communications Act of 1934, as amended, to award licenses by auction in cases of mutually exclusive applications.[29/] As such, even if there was any ambiguity regarding Congress' intent, Section 647's scope must be narrowly construed, consistent with the maxim expressio unius est exclusio alterius.

Northpoint's final attempt to "bootstrap" its way over this high statutory hurdle borders on the absurd. Northpoint claims that Section 647 of the ORBIT Act was enacted to avoid the potentially severe delays in the deployment of international satellite systems that could result from country-by-country auctions. It then states that, "[s]imilarly, allowing auctions for terrestrial service using the same frequencies [as satellite systems] could result in awarding licenses to a high bidder that, unlike Northpoint, cannot coexist with NGSO operators, thus also hindering the development of global satellite services."[30/] This assertion assumes certain "facts" not in evidence.

First, it assumes that PTM services in the 12.2-12.7 GHz band, to the extent they are permitted at all, will not be secondary to all satellite services. Second, it assumes that Northpoint has somehow demonstrated that it will not cause debilitating interference to NGSO systems (ignoring, of course, the documented problems caused by Northpoint to DBS services).

[29/] 47 U.S.C. § 309(j).

[30/] Northpoint Pleading at 17.

Taking the latter point first, as SkyBridge demonstrated supra, the only NGSO applicant with which Northpoint has a "sharing" agreement is Virgo, which has, under their agreement, simply abandoned the 12.2-12.7 GHz band. While, as SkyBridge has noted elsewhere,[31/] this is precisely the sort of "sharing" favored by Northpoint, it hardly constitutes a model for the expeditious deployment of viable international satellite systems. That may explain why no other NGSO applicants (or DBS licensees) have, to date, embraced Northpoint's approach to "coexistence."

Finally, as demonstrated repeatedly by SkyBridge and others, to the extent that PTM systems are permitted into the 12.2-12.7 GHz band, they must be secondary to all satellite systems, DBS and NGSO FSS.[32/] In that way, the Commission truly can ensure that PTM system will not "hinder" the development of global satellite systems. Indeed, as is discussed in greater detail below, the legislative history of the SHVIA, on which Northpoint incorrectly relies with regard to other matters, makes clear that any PTM systems ultimately deployed in the 12.2-12.7 GHz band are not to cause harmful interference to, inter alia, NGSO FSS systems.

E. Nothing In The SHVIA Compels the Prompt Award Of A License to Northpoint.

Section 2002 of the SHVIA directs the Commission "to make a determination" with respect to "licenses or other authorizations for facilities" proposing to use, inter alia, the 12.2-12.7 GHz band for the distribution of local television signals to DBS subscribers. Northpoint argues that "making a determination" (prior to the expiration of the one-year

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31/ See SkyBridge July 13 Letter.

32/ See, e.g., SkyBridge February 18 Letter at 6-7, Annex at 16-36.

period set out in Section 2002, or November 29, 2000) can be construed to mean only "granting or denying" its license applications.[33/]

First, it is not at all clear that Northpoint qualifies for any sort of benefit under the SHVIA. The clear -- and narrow -- intent of Section 2002 is to facilitate the provision of "local-into-local" ("LIL") services for DBS subscribers. Putting aside the fact that this goal is being achieved increasingly by the DBS systems themselves -- which was the primary goal of that legislation -- the bandwidth (500 MHz) sought by Northpoint exceeds by at least an order of magnitude the amount of spectrum legitimately needed to provide the services identified by Section 2002. Northpoint's own description of the services it proposes to offer focus not on LIL but on the sort of video entertainment packages offered by cable and DBS systems.[34/] Under the circumstances, at the very least Northpoint must make a convincing demonstration regarding the amount of spectrum actually needed for LIL services and be limited thereto under any special dispensation accorded to it pursuant to Section 2002.

Second, Northpoint's proposed interpretation of Section 2002's requirement that a licensing "determination" be made prior to November 29, 2000, is flawed. It is exceedingly rare for Congress to direct that any specific action be taken by the Commission with respect to issuing a license, particularly if doing so would require the Commission to ignore or abbreviate its traditional statutory and administrative procedures. And when Congress does carve out one of these rare exceptions to its traditional deference to the agency's expertise on such matters -- especially one, as here, laden with complex technical

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[33/] Northpoint Pleading at 19.

[34/] See, e.g., Northpoint Pleading at 21-22.

issues -- it does so with great particularity, being very specific about its intent to truncate otherwise standard Commission proceedings.[35/]

In the instant case, to accept Northpoint's theory that, when Congress used "determination" in Section 2002 of the SHVIA, it actually meant a "licensing decision," it must be assumed that Congress implicitly directed the Commission to cut off all other interested parties' Ashbacker [36/] rights, as well as circumventing or terminating the Commission's basic processes for judging the technical feasibility of a new allocation or service. If this truly had been Congress' intent, it would have spoken with far greater clarity.

Finally, assuming arguendo the accuracy of Northpoint's analysis of Section 2002, there can be only one answer to its request for relief under the SHVIA: its applications must be denied. A critical statutory prerequisite to favorable action on any terrestrial application in the 12.2-12.7 GHz band -- either before or after November 29, 2000 -- contained in Section 2002(b)(2) of the SHVIA is a Commission finding that such terrestrial service will not cause harmful interference to satellite services. The legislative history makes clear that the satellite services to be protected include both existing primary services, such as DBS systems, as well as future satellite systems that may become primary in the band, such as NGSO FSS.[37/] Thus, assuming that the Commission adopts the proposal in the NPRM to, inter alia, make NGSO FSS systems co-primary in the 12.2-12.7 GHz band with DBS (consistent with the outcome of WRC-2000), Northpoint must demonstrate that it will not cause harmful

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35/ See, e.g., 47 U.S.C. § 331(a), in essence directing the Commission to terminate a comparative renewal proceeding then ongoing under 47 U.S.C. § 309(e) and grant the incumbent licensee's renewal application, subject to certain conditions. See also Multi-State Communications, Inc. v. FCC, 728 F.2d 1519 (D.C. Cir. 1984).

36/ Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

37/ See Statements of Senator Gorton and Senator McCain, 145 Cong.Rec. No. 165 - Part II at 515014 (Nov. 19, 1999).

interference to SkyBridge and other NGSO systems prior to receipt of a license. This it has failed to do.

CONCLUSION

The Northpoint Pleading is bereft of factual or legal support. There is no factual or legal nexus between either the NGSO and PTM applications or their respective proposed regulatory schemes that would compel the Commission to withhold action with respect to NGSO systems until issues regarding PTM systems are resolved. Moreover, Northpoint has failed to establish an essential prerequisite to the licensing of any PTM system in the 12.2-12.7 GHz band: noninterference to satellite systems. There simply is no factual or legal support for the relief sought by Northpoint.

The instant rulemaking should be concluded with respect to the GSO/FS/NGSO sharing issues immediately, and the pending NGSO applications should be licensed as expeditiously as practicable. Further proceedings regarding the ability of PTM

systems to avoid harmful interference to DBS and NGSO systems are necessary, assuming arguendo that the Commission concludes that there is any reason to believe that this can be accomplished.

Respectfully submitted,

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September 18, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of SkyBridge L.L.C. on "Ex Parte Submission of Northpoint Technology, Ltd., and BroadwaveUSA" was served this 18th day of September, 2000, by hand or by first class U.S. mail, on the following:

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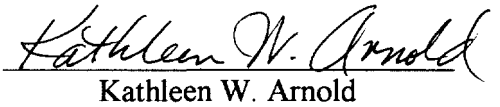

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